

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 322 of 1996

WITH

CIVIL REVISION APPLICATION No 323 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No @@fe
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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

Parties in CRA No. 322 of 1996

NEW INDIA ASSURANCE CO.LTD.

Versus

SAJAN KESHURBHAI

Parties in CRA No. 323 of 1996

NEW INDIA ASSURANCE CO. LTD

Vs.

PRABHABEN KESHAVJI & OTHERS

Appearance:

1. Civil Revision Application No. 322 of 1996

MR MR GEHANI for Petitioner

Respondents Served

2. Civil Revision Application No 323 of 1996

MR MR GEHANI for Petitioner

No appearance for respondents

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 23/09/96

COMMON JUDGEMENT

1. These two Civil Revision Applications are filed by New India Assurance Company Limited. Respondents are the original claimants who have instituted Motor Accident Claim Petitions. The details of CRA, MACP and the amount of interim compensation and the date of order of the MACT at Jamnagar under section 140 under the principle of "no fault liability" are stated in the tabular form herein:

CRA MACP Amount of Date of order

No. No. interim

compensation

322/96 259/95 Rs.50,000/- 18.12.1995

with interest

at 12% per annum

323/96 260/95 Rs.50,000/- 18.12.1995

with interest

at 12% per annum

2. While issuing Rule nisi in these Civil Revision Applications, this Court directed the Insurance Company to deposit the full amount of interim compensation as directed by the Tribunal with further direction that one half amount so deposited shall be paid to the claimant in each petition and for the balance amount no disbursement to be made till further order is passed by this Court.

3. Mr.Ghehani, learned Counsel appearing for the Insurance Company has informed the court that the interim compensation as directed is already deposited by the Insurance Company.

4. Mr.Ghehani, learned advocate for petitioner company has submitted before this court that the Insurance Company can not be called upon to pay interim amount of compensation under the principle of "no fault liability" when the defence is taken by the Insurance Company that the policy in question was an "Act Policy" and it did not cover risk of the occupants in goods rickshaw. He submitted that since the claimants were travelling in Chhakdo which was a goods vehicle, occupants of said vehicle were not covered by the policy of the Insurance Company. In his submission when such legal defence is available to the Insurance Company it could not be directed to pay the interim compensation.

5. No one appears for the respondents. In group of other Civil Revision Applications No.324 to 329 of 1996, disposed of by this Court by common judgment and order dated 17th of April, 1996, this Court considered the judgment of the learned Single Judge of this Court reported in 1995(2) GLR 111. In the aforesaid decision while dealing with section 140 of Motor Vehicles Act, 1988, the learned Single Judge of this court held that it is a piece of beneficial and ameliorative legislation providing for immediate aid to the victims of the accidents. In such cases the claimant is not required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to wrongful act, neglect or default of the owner of the vehicle concerned or another person. The learned Single Judge further took the view that in construing social welfare legislation, the courts should adopt beneficial rule of construction and in any event that construction should be preferred which fulfils the policy of the legislation. The learned Single Judge also took the view that the tribunal should make the award under section 140 as soon as it comes to conclusion that the owner of the vehicle was involved and that the vehicle was insured. In the case before the learned Single Judge it was the case of the petitioner-company that the claimant was travelling in a goods vehicle without any goods and therefore the Insurance Company could not have been saddled with any liability under Section 140 of the Act. The contention is identical contention to one which is raised before this court by Mr.Ghehani. Such contention was not accepted by the learned Single Judge.

However, Mr.Ghehani is right in submitting that the Insurance Company will be without any remedy and will very often suffer irreparable loss if ultimately it is found that under the Act Policy the Insurance Company was not liable to pay compensation to the occupants who were travelling in goods vehicle. He submitted that even if liability is to be fastened under Section 140 of the said Act, the claimant should be put to some condition so that in case of success of the Insurance Company, it can take steps to recover said amount from the claimants.

6. In view of the decision of the learned Single Judge in the aforesaid case, there is no substance in the contention raised by Mr.Ghehani on behalf of the petitioner - Company. The petitioner - Company is liable to pay interim compensation under Section 140 of the said Act. One half amount of the award deposited is directed to be disbursed to the claimants and balance one half of the awarded amount is directed to be deposited in any nationalised bank for a fixed period of five years with provision for accumulation of interest thereon. Such amount shall not be disbursed to anyone till the petition is finally decided. This would safeguard partially the interest of the Insurance Company in case it ultimately succeeds in the claim petitions.

7. In the result the aforesaid two Civil Revision Applications fail and they are dismissed subject to aforesaid directions as regards balance amount. Rule in each CRA is discharged. No costs.

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